STATE OF MICHIGAN

COURT OF APPEALS

MARGARET HENNESSEY and MICHAEL HENNESSEY, Plaintiffs-Appellants, v WILLIAM BEAUMONT HOSPITAL, Defendant-Appellee.	UNPUBLISHED March 18, 2003 No. 237701 Oakland Circuit Court LC No. 00-026295-NH

Before: Markey, P.J., and White and Zahra, JJ.

PER CURIAM.

Plaintiffs appeal as of right the circuit court's grant of summary disposition to defendant under MCR 2.116(C)(10) in this premises liability case. We affirm.

On March 1, 2000, plaintiff Michael Hennessey was a surgical patient at the Troy location of defendant Beaumont Hospital. Plaintiff Margaret Hennessey, his wife, was employed as a staff nurse in the Post-Anesthesia Care Unit (PACU) at defendant hospital, but on the day in question was there to be with her husband, and not as an employee. Mrs. Hennessey accompanied her husband to the PACU recovery room after his surgery. Mr. Hennessey was placed in a clinical care reclining chair,[1] where he remained for approximately one hour, through phase one of his recovery, and then in phase two. Mr. Hennessey testified at deposition that he

[1] The "clinical care recliner" is manufactured by LUMEX, Model No. 577G427, and is adjustable to multiple positions, including a "Trendelenburg" position. The LUMEX promotional literature submitted below stated that the recliners "have the built-in versatility to meet the demanding needs of clinical and critical care. As the market leader for health care recliners, Lumex has always been at the forefront of product innovation and product improvement."

Regarding the model at issue, the promotional literature stated that it had an "easy to activate gas cylinder," and "From fully upright to fully reclined for improved positioning. Enables the caregiver to achieve quick Trendelenburg." The photos of the clinical care recliner submitted below show that the "gas spring actuating lever" is a padded handle located high on the back of the chair, parallel to the headrest. According to the Lumex operating instructions, the chair will go into the Trendelenburg fully reclining position only when actuated by an attendant; the fully reclining position cannot be achieved by the occupant of the chair alone.

was sedated when he came out of surgery and was placed in the chair, and that he remembered commenting to his wife and the nurse that was present that the chair "felt like a waterbed" underneath him, as though he were floating. Mr. Hennessey and all those present testified that nothing went wrong with the chair before the chair back suddenly and unexpectedly collapsed. The incident occurred around 10:50 a.m., while Mrs. Hennessey and nurse Mary Roth Draveski were with Mr. Hennessey, standing on either side of him. When the chair back unexpectedly began to collapse, Mrs. Hennessey and nurse Draveski both lunged and grabbed the chair back to prevent Mr. Hennessey from sustaining injury. In the process, Margaret Hennessey sustained severe and permanent injury to her spine, which required surgery.

Plaintiffs' complaint alleged that defendant owed business invitee Margaret Hennessey the duty to protect her from harm defendant knew or should have known existed on the premises, and breached that duty by failing to provide an appropriate recovery apparatus, failing to properly use said apparatus, failing to inspect said apparatus which would have revealed that it was not properly engaged, failing to warn plaintiffs of the danger which defendant knew or should have known existed, and failing to properly train and supervise hospital employees in the correct use of the apparatus. Plaintiff Michael Hennessey alleged loss of consortium.

Defendant filed a motion for summary disposition under MCR 2.116(C)(10), arguing that the collapse of the clinical care recliner constituted an unanticipated danger that defendant could not likely have discovered on inspection. Defendant argued that plaintiffs had failed to make a showing that defendant had either actual or constructive knowledge of any defect in the chair, and failed to show any breach of defendant's duty to provide a reasonably safe place for patients and their visitors.

Defendant submitted documentary evidence below that defendant hospital had used the reclining clinical care chairs for thousands of patients, and had never experienced a similar incident of the chair back collapsing. Deposition testimony of all those present at the incident was that the chair functioned properly while Mr. Hennessey occupied it after surgery, until the sudden and unexpected drop occurred. In response to defendant's motion, plaintiff maintained that the reclining care chair was not defective, and presented evidence that defendant's agents examined the chair following the accident and found it fully and correctly operational. Plaintiff maintained that defendant should have trained its staff in the proper operation of the chair, and that the staff should have been properly trained in the placement of sheets on the chairs.

It is undisputed that the chair collapsed unexpectedly, at a time when no one had contact with the gas spring actuating lever, located on the back of the chair behind the headrest. It is undisputed that the gas spring actuating lever must be actuated and held down in order to place the chair in the reclining "Trendelenburg" or shock position, at which a patient's head is lower than his feet. All three persons present during the incident testified that no one had contact with the chair's lever at all. Plaintiff presented evidence that few, if any, of the hospital staff had been trained in the operation of the chair, that some of the staff were unaware that the chair could go into the fully reclining "Trendelenburg" position, and that after the instant accident, defendant disabled chairs on the PACU by cutting the chord to the chair's gas cylinder in order that a similar incident not occur again.

Plaintiff maintained below that *given the absence of any other explanation* the only possible explanation for the chair's collapse is that the bed sheet, routinely placed under post-

surgical patients (including Michael Hennessey) for hygiene and comfort purposes while in the reclining chairs, and draped over the back of the reclining care chairs must have gotten caught on the lever on the back of the chair that must be actuated to fully recline the chair, and that that caused the collapse. In a reply brief, defendant argued, or reiterated, that plaintiffs had failed to establish a prima facie case of negligence, that the chairs were used thousands of times without incident, that the chairs were regularly cleaned and inspected by nursing staff, that plaintiff presented no evidence "as to what additional reasonable inspections or precautions could/should have been undertaken by the Defendant to maintain the chairs in a safe condition, and which would have avoided the occurrence," and that the nursing staff had never seen a chair break on the premises.

Following a hearing, the circuit court granted defendant's motion.

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A motion under MCR 2.116(C)(10) tests the factual support for a claim, and is reviewed de novo. *Smith v Globe Life ins Co,* 460 Mich 446, 454; 597 NW2d 28 (1999).

> In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion . . . .
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> In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists . . . . If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. [*Smith, supra* at 454-455, quoting *Quinto v Cross & Peters Co,* 451 Mich 358, 362-363; 547 NW2d 314 (1996). Citations omitted.]

To establish a prima facie case of negligence, a plaintiff must show that the defendant owed the plaintiff a duty, a breach of that duty, and that the breach was a proximate and factual cause of the plaintiff's damages. *Johnson v Detroit,* 457 Mich 695, 711; 579 NW2d 895 (1998). Where the events leading to the injury are not foreseeable, there is no duty. *Id.*

A business invitor "owe[s] the duty to its customers and patrons of maintaining its premises in a reasonably safe condition, and of exercising due care to prevent and obviate the existence of a situation, known to it or that should have been known, that might result in injury." *Kroll v Katz,* 374 Mich 364, 371; 132 NW2d 27 (1965). There is no liability for harm resulting from conditions from which no reasonable risk could be anticipated or those which the invitor did not know and could not have discovered with reasonable care.

Assuming without deciding that defendant owed plaintiff Margaret Hennessey, who was neither a patient nor an occupant of the chair, the duties alleged, we conclude that plaintiffs did not meet their burden of coming forward with evidence sufficient to raise a genuine issue of fact whether defendant breached any of those duties. Further, plaintiffs failed to present evidence,

other than conjecture and speculation, to support their proximate cause theory, i.e., that the bed sheet on the chair somehow engaged the gas spring lever that must be actuated (and held down) in order to fully recline the chair.

Affirmed.

/s/ Jane E. Markey
/s/ Helene N. White
/s/ Brian K. Zahra